



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
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Honorable Walter Woodul, Member Board of Regents
State Teachers' Colleges of Texas
Chronicle Building
Houston 2, Texas

Honorable Walter A. Koons, Division Counsel
Federal Works Agency
Bureau of Community Facilities
702 Electric Building
Fort Worth 2, Texas.

Gentlemen:

Opinion No. 0-7335

Re: Whether or not the governing bodies of the State-owned and operated educational institutions may delegate to a representative the authority to act on behalf of such governing body and college, as is generally set out in a form of resolution submitted; and other related questions.

Your request for an opinion from this department upon the above titled subject-matter is as follows:

"On last Friday, September 13th, Governor Walter Woodul, as a member of the Board of Regents of the State Teachers' College of Texas, and I discussed with various members of your staff certain questions relating to the Veterans' Educational Facilities program. The law under which the agency is operating is known as Public Law 697, 79th Congress, approved August 8, 1946. I enclose a copy of the regulations for Veterans' Educational Facilities in which is quoted the enabling law.

"The Bureau of Community Facilities has been given the responsibility, under regulations issued by the Federal Works Administrator, for the administration of the enabling law, Section 504 of the

Lanham Act, as amended. The purpose of the enabling law and the regulations is to assist in relieving acute shortages of educational facilities required for persons engaged in the pursuit of courses of training or education under Title II of the Servicemen's Readjustment Act of 1944, as amended. Such assistance is to be provided by the use or re-use of available Government surplus structures or facilities at any educational institution where the United States Commissioner of Education or his authorized representative finds such shortages exist or impend.

"In order to expedite the Veterans' Educational Facilities Program, the governing body of the applicant will be asked to designate and authorize a representative to act for the applicant, to the extent permitted by local law or charter, in all matters relating to the provision of the educational facilities requested, including without limitation the preparation and submission of applications, the making of agreements, and the acceptance of any educational facilities.

"The enabling law provides that: 'At any educational institution...where the Commissioner of Education shall find that there exists or impends an acute shortage of educational facilities, other than housing, required for persons engaged in the pursuit of courses of training or education under Title II of the Servicemen's Readjustment Act of 1944, as amended, the Federal Works Administrator is authorized, upon request of such educational institution, to provide such educational facilities...'.

"In order to enable the United States Commissioner of Education or his authorized representative to make such a finding, and to furnish information to the Bureau of Community Facilities, each eligible applicant requesting assistance under this law shall file a 'Justification of Need'.

"Attached hereto is a sample copy of the 'Justification of Need', specifying the information required by the United States Commissioner of Education and containing instructions for its preparation. The 'Justification of Need' is not an application for the provision of educational facilities and will not be so considered.

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"The Division Engineer will notify the applicant when the request has been approved in whole or in part, and surplus property has been made available to the Bureau. The applicant will then be required to enter into whatever agreements may be necessary to carry out the work.

"To the fullest extent practicable the educational facilities to be provided by the Government shall be provided by the use or re-use of available and suitable structures and facilities, including equipment, materials, and furnishings, under the jurisdiction or control of any Federal agency which in the determination of the War Assets Administrator or his designated representative are available for such use or re-use.

"Under the enabling law and regulations the Bureau of Community Facilities may not acquire or prepare the site or install streets or utility mains.

"Preparation of the site includes clearing, grubbing, grading and drainage where necessary, but does not include the installation of foundations for the requested educational facilities.

"It is the responsibility of the applicant to provide the necessary architectural and engineering services for the facilities to be installed or erected on the applicant's site.

"The erection or installation of Federal surplus structures or facilities will be the responsibility of the Federal Works Agency, and will be performed by contract methods as a Federal undertaking. Written authority to enter upon and use the site for the purpose of installing or erecting educational facilities must be furnished to the Division Engineer before the contractor will be authorized to begin work.

"Although the provision of the facility is a Federal undertaking, it is essential that there be close cooperation between all interested parties to insure its completion in a satisfactory manner in the shortest possible time.

"The interests of the Government in the educational facilities provided under the enabling law and

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installed or erected on sites provided by the institution may be transferred to the educational institution when they are completed and ready for use, and the institution shall assume full responsibility for their maintenance and operation.

"Under some situations the government may permit the use of surplus government facilities on land which is under the control of the government and in which the government desires to continue an interest. In these cases the facilities provided will not be transferred to the educational institution, but may be made available to such institution for the training and education of veterans.

"The educational institution will be required to execute receipts to the Bureau of Community Facilities for all educational facilities or equipment provided under the enabling law.

"Attached also is a sample copy of BCF Form 300 which will be the agreement between the Government and the college. The form will be completed by inserting the proper dates, name of college, a description of the site upon which the buildings are to be located and a general description of such buildings. It is most desirable that this agreement be executed on behalf of the college by the representative to be appointed therefor.

"Also enclosed is BCF Form 304 which can either be executed by your office or some local attorney who is familiar with the facts concerning the title to the land upon which the buildings are to be located. We will request these certificates at a later date.

"BCF Form 305 is a transfer by the Government of the facilities to the college and a receipt therefor by the college. This instrument should also be executed by the representatives to be appointed.

"With the explanations heretofore set forth it is earnestly requested that you let me have your opinion, addressed jointly to Governor Woodul and myself with respect to the following questions:

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- "1. May the governing bodies of all of the state owned and operated educational institutions delegate to a representative the authority to act on behalf of such governing body and college as is generally set out in the enclosed sample resolution.
- "2. Can the public educational institutions of Texas lawfully expend their 'local', 'revolving' or any other fund to provide the engineering services and the work in connection with the site as is set forth herein.
- "3. Can the governing boards of state institutions involved agree to accept these facilities upon their completion and to use them for effectuating the objectives of the enabling law.

"It will be highly appreciated if you will not limit your opinion in this matter to the powers of the board of regents for the Texas State Teachers Colleges but to let it cover all of the public institutions of higher learning owned and operated by the State of Texas.

"I have on my desk at this time documents from many of the State Educational Institutions and I will appreciate your expediting your opinion in this matter to the end that we may commence construction of the facilities at the earliest possible date."

The form of resolution mentioned by you, and attached to your request, is as follows:

"WHEREAS, _____ (herein called the
(name of applicant)
'Applicant'), acting by and through its governing body, upon the basis of available data, has found that there exists or impends an acute shortage of educational facilities required for persons engaged in the pursuit of courses of training or education under Title II of the Servicemen's Readjustment Act of 1944, as amended,

and to relieve such shortage proposes to request the United States of America through the Bureau of Community Facilities, Federal Works Agency, (herein called the 'Government'), to provide educational facilities, pursuant to Public Law 697, 79th Congress, (Section 504 of the Lanham Act, as amended), and in connection therewith, has examined and considered such law, the Regulations, the Information for Applicants, the form of application and the form of proposed agreement;

"NOW, THEREFORE, be it resolved by the _____
of the Applicant
(governing body of applicant)
(herein called the 'Governing Body') that a justification of need and that an application or applications be filed, in such form as may be required by the Government, to provide such educational facilities as are required to alleviate such acute shortage, and that the Applicant will comply with the various requirements and conditions necessary to enable the Government to provide such facilities; and

"BE IT FURTHER RESOLVED that _____
(name of representative)
is hereby designated as the Applicant's Representative and is authorized in his capacity as such Representative to file with the Government a justification of need and an application or applications to negotiate, execute, and enter into an agreement or agreements with the Government in substantially the form of agreement considered by the Governing Body, to negotiate, execute and enter into such other agreements and instruments and to perform and do any and all acts as may be necessary to provide a suitable site and site preparation, streets or roadways, sidewalks, landscaping, utility mains, technical or engineering data, architectural or engineering services, necessary rights of entry and rights of way for Government operations, to accept on behalf of the Applicant ownership and possession of such facilities, to assure the Government that such facilities will be utilized by the Applicant to carry out the purposes of such law, and to do or perform any and all other acts that are necessary to accomplish the

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purposes of the Applicant's application, to perform the Applicant's obligations under its agreement with the Government, and to obtain the provision of such facilities."

The form of agreement contemplated in the governmental plan, which also accompanies your request, is as follows:

"This Agreement entered into this ____ day of _____, 194____, between the United States of America (herein called the 'Government'), acting by and through the Bureau of Community Facilities, Federal Works Agency, and _____ (herein called the 'Applicant'), a _____, duly organized and existing by virtue of the laws of _____;

"WITNESSETH: That pursuant to the application of the Applicant and for the purpose of carrying out Public Law 697, 79th Congress, approved August 8, 1946, (herein called the 'Enabling Law'), the parties hereto do hereby agree, in consideration of the mutual promises and undertakings herein specified and in accordance with the authority granted to the authorized representative of the Applicant, as follows:

"1. Undertaking by the Government: The Government agrees that, at its own cost and expense and through the use or reuse of structures or facilities, including improvements, equipment, materials, or furnishings available or made available to the Federal Works Administrator pursuant to such Enabling Law, it will:

- "(a) Provide for the Applicant, in or about the locality or localities indicated below, the following described educational facilities (herein called 'Educational Facilities'):
- "(b) Make necessary connections to the utility mains made available by the Applicant pursuant to this Agreement;
- "(c) Transfer possession and ownership of the

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Educational Facilities to the Applicant as soon after installation as practicable.

"2. Undertaking by the Applicant: The Applicant agrees that where needed and to the extent required by the Government, but without any cost or expense to the Government, it will:

"(a) Furnish satisfactory detailed plot plans showing topography, adjacent buildings, streets and utilities on and near the site or sites of the proposed facilities, drawings and specifications and other architectural and engineering services, including staking and layout of locations and utility mains.

"(b) Furnish a suitable site or sites for the Educational Facilities, provide satisfactory evidence of title or adequate possessory interest, and prepare such site or sites by clearing, grubbing, grading and drainage.

"(c) Provide necessary streets or roadways, sidewalks, landscaping and utility mains required in connection with any structures that are to be provided by the Government under this Agreement, all in accordance with the approved plans and specifications.

"3. Right of Entry: The Applicant hereby grants to the Government, its agents, representatives and contractors (and their employees) full right, power and authority to enter upon the above-mentioned site or sites together with all necessary rights of way thereon and rights of ingress to and egress from the site or sites provided by the Applicant for the purposes of this Agreement, with all necessary right and authority to perform thereon, without undue interference, such acts and things as may be necessary to the performance of the Government's obligation hereunder.

"4. Cooperation: The Applicant agrees that it, its agents, employees and contractors will cooperate fully with the Government, its agents, representatives and con-

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tractors, and the Applicant further agrees that it will coordinate its work with the activities of the Government under this Agreement so that the operations under this Agreement may proceed in an orderly manner and with dispatch.

"5. Transfer and Use of Facilities: The Applicant agrees that it will accept and use the Educational Facilities, when they are transferred to it by the Government, for effectuating the purposes of the Enabling Law and this Agreement, and that simultaneously with such transfer it will execute a receipt for such facilities in form satisfactory to the Government.

"6. Government Non-Intervention: Nothing herein shall be construed as vesting in any department or agency of the United States power to exercise any supervision or control over the Applicant, or such facilities when transferred to the Applicant, nor shall any of the provisions hereof be construed as prescribing or affecting the Applicant's administration, personnel, curriculum, instruction, methods of instruction, or materials for instruction."

We answer your first inquiry in the affirmative. More specifically, we are of the opinion that the proposal outlined above does not involve the unlawful delegation of official powers, within the forbidding rules of law, but on the contrary, it is the mere details of a policy officially declared by the governing bodies of the respective institutions.

In regard to question 2, we are of the opinion that under existing appropriations, local and institutional funds are available to all State-supported institutions of higher learning, except the University of Texas and the Agricultural and Mechanical College, to defray the architectural and engineering costs and expenses for work in connection with the site set forth in the proposed undertaking of said institutions, as outlined in your letter. (Chap. 377, Acts 49th Leg.)

Such expenditures on behalf of the University of Texas and the Agricultural and Mechanical College are limited to appropriations from other than the General Fund. (Sec. 14, Art. VII, Const. of Texas), and hence their local institutional receipts, revolving funds and other appropriations from the General Fund are not expendable for the purposes enumerated. See: Gulf Ins.

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Co. v. James, 143 Tex. 424, 185 S. W. (2) 986; *State Pharmaceutical Ass'n. v. Dooley*, (Civ. App.), 90 S. W. (2) 322. However, your attention is directed to the fact that the current appropriation acts authorize the expenditure of the balances from the Available University Fund allocated to the University of Texas, and to Agricultural and Mechanical College for permanent improvements, equipment, repairs and physical plant operation and maintenance; the expenditures contemplated by your second inquiry are therefore within the purposes for which the balances in the Available University Fund are appropriated to the two institutions. (Acts, 49th Leg., p. 632; p. 725)

We answer your third inquiry in the affirmative.

The answers above given cover the governing boards of all state institutions embraced in your letter of request, and this opinion may be taken as applicable individually to such institutions.

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY

Osie Spear
Osie Spear
ASSISTANT

APPROVED OCT

9, 1946

Shorn Sellers
ATTORNEY GENERAL OF TEXAS

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